IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1236 OF 2004

The State of Maharashtra ...Appellant

Versus

Baliram Deoram Chavan ...Respondent

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Mr. V.B. Konde Deshmukh, A.P.P. for State.

Mr. K.S. Patil, Advocate for Respondent.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 11TH JULY, 2005

P. C.:-

1. Heard the learned A.P.P. for the State and the learned advocate for the respondent i.e. original accused.

2. The appellant i.e. the State of Maharashtra has challenged the judgment and order dated 30.7.2004 passed by the Special Judge, Sangli in Special Case No. 10 of 2002. By the said judgment and order, the learned Special Judge acquitted the respondent of the offences punishable under Section 7, 13(1)(d) r.w. 13(2) of Prevention of Corruption Act, 1988. Being aggrieved by the said judgment and order, this appeal against acquittal has been preferred by the State.

3. It is the prosecution case that the complainant P.W.1 Rajaram Katkar a bus conductor was on duty on 14.5.2002. At that time a person fell down from the bus accidently, thereafter, the said person died. The complainant Shri. Katkar was asked to attend the police station. Accordingly, on 15.5.2002 Shri. Katkar met the respondent-accused who was a P.S.I. attached to the police station. According to the complainant, on 15.5.2002 the respondent demanded a bribe of Rs.2000/- to 3000/- from the complainant for discharging them from the proceedings relating to the accident case. Shri. Katkar expressed his inability to pay the bribe. After some days a telephone message was received by Shri. Katkar that he was called to the police station with money and a surety. Accordingly on the next day i.e. on 24.5.2002 Shri. Katkar went to the police station where again accused told him that in case the money is not paid to him Shri. Katkar would be in trouble. The accused agreed to accept Rs.2000/- from Shri. Katkar as bribe money and asked Shri. Katkar to bring that amount with surety on 28.5.2002. It is further the prosecution case that on 28.5.2002 the accused demanded the amount of Rs.2000/- which was handed over by the complainant Katkar to him.

4. As per the prosecution case as stated above, on three different occasions i.e. on 15.5.2002,

24.5.2002 and 28.5.2002, the demands were made by the respondent to the complainant. So far as the first demand of 15.5.2002 is concerned, though Shri. Katkar has stated in his examination in chief about it, the said evidence is falsified in his cross examination where Shri. Katkar has stated that he did not meet the accused between 14.5.2002 and the day when Shri. Mulla (Bus Driver) was sent to the office of the R.T.O. Shri. Katkar did not remember when the bus driver Shri. Mulla took the bus to the R.T.O. office. However, in the cross examination Shri. Katkar clearly stated that though he did not remember the date when for the first time he went to the police station alongwith Shri. Shetye, but it was after four days or so since the injured fell down from the bus. Thus, Shri. Katkar first went to the police station after four days since 14.5.2002. The demand on 15.5.2002 in the police station therefore, appears to be doubtful. On crucial point of demand on 15.5.2002, Shri. Katkar stated on oath in his cross-examination that, "when the vehicle was sent for inspection, there was no any other talk between me and the accused." This admission makes it doubtful as to whether on 15.5.2002 there was a talk between the accused and Shri. Katkar about demand of bribe money. The demand of bribe money on 15.5.2002 therefore, appears to be doubtful.

5. As far as the demand on 24.5.2002 is concerned, as per the report Exh.11 after 14.5.2002, Shri. Katkar received a telephone at his house on 23.5.2002 to the effect that on 24.5.2002 Shri. Katkar was called upon to attend the police station with surety and money. Thus, it is the prosecution case that on 24.5.2002 Shri. Katkar went to the police station as he had received a telephone call on the earlier day. In respect of demand on 24.5.2002 it is pertinent to note that Shri. Katkar could not tell as to who gave that telephone call and secondly, the said telephone call was received by the family members of Shri. Katkar. In view of the fact that neither the statement of any family members of Shri. Katkar has been recorded nor they have been examined though Shri. Katkar stated that the telephone call was attended by his family members, it is difficult to accept the theory of such telephone call being received. Thus, the evidence of Shri. Katkar that he was informed on phone to bring surety and money therefore, appears to be unreliable. Moreover, the evidence as to actual demand on 24.5.2002 is also not such as to inspire confidence.

6. In respect of third demand i.e. on 28.5.2002, on that day the trap was arranged. It is the version of Shri. Katkar that he met the accused in the premises of the police station in the basement portion. He

further deposed that after he met the accused, they went for a cup of tea in a stall near Bharti Vidyapeeth and again returned back to the basement portion of the police station. Till then, there was no demand of bribe money by the accused. Shri. Katkar has clearly stated in the cross examination that on 28.5.2002 the accused did not demand any bribe money in the basement area. It is pertinent to note that Shri. Katkar and accused returned to the police station after taking tea. In the basement area Shri. Katkar told the accused that he had brought Rs.2000/-. From the evidence of Shri. Katkar, it appears that the accused himself did not make any demand from Shri. Katkar but Shri. Katkar told the accused that he had brought Rs.2000/- as demanded by him.

7. The demand of bribe money on 28.5.2002 also appears to be doubtful because of inconsistency in the evidence i.e. the contents of panchanama, the evidence of P.W.2 Shri. Patil the panch witness and Shri. Katkar. Shri. Katkar has stated that on 28.5.2002 the accused did not demand any bribe money in the basement portion of the police station, but such demand was made in the tea stall where they enjoyed a cup of tea. Admittedly, Shri. Katkar did not state before police that the accused demanded bribe money from him while taking tea. However, the

panch witness P.W.2 Suryaji Patil states that the demand was made by the accused in the basement area of the police station. Thus, there are two versions on record about the place where the accused demanded the bribe amount from Shri. Katkar on 28.5.2002. The evidence of Shri. Katkar that the bribe money was demanded in the tea stall is not believable because P.W.2 Shri. Patil has admitted in his cross examination that there was no talk in the tea stall. Thus, the said demand at the tea stall cannot be accepted because panch witness P.W.2 Patil has given another version. The post trap panchanama Exh.15 also reveals that such demand was made at basement and no such demand was made at the tea stall. This variance and inconsistency in the evidence of Shri. Katkar and the panch witness Shri. Patil makes the demand on 28.5.2002 very doubtful. The variance in the evidence of the witnesses and the post trap panchanama assumes importance especially looking to the fact that Shri. Katkar has stated in his evidence that he himself told the accused that he brought Rs.2000/- as demanded by him. Thus, it is seen that Shri. Katkar has not clearly stated that there was any demand by the accused person on 28.5.2002.

8. The learned A.P.P. has pointed out that Anthrocyn powder was found on the hands and pant

pocket of the accused person and notes of Rs.2000/- was found in his pocket. It is pertinent to note that the defence of the accused is that Rs.2000/- was thrust by the complainant in his pocket and while he was seeing what the complainant put in his pocket the police arrived. The panch witness has deposed that since Shri. Katkar and the panch witness met the accused, Shri. Katkar told the accused that he had brought surety and the document of the property, the accused told that he had done the work of Shri. Katkar and the surety was not required. He said that he had already sent the papers to the District Government Pleader. Thus, at the time when Shri. Katkar met the accused person, the file had already been forwarded by the accused to the D.G.P. and as such he had lost his control over the said file. This evidence considered in the background that Shri. Katkar had apprehension in his mind of being prosecuted in criminal case and that he was requesting the accused not to take any legal steps against him, makes it probable that Shri. Katkar might have voluntarily paid the said amount of Rs.2000/- to the accused. The contents of the post-trap panchanama (Exh.15) also show that when the work of preparing panchanama was going on, the statement of accused was recorded wherein the accused immediately explained to the police that Shri. Katkar put the currency notes in his pant pocket to

close the proceeding and when accused was seeing as to what Shri. Katkar had kept in his pant pocket, the police immediately caught the hands of the accused. In such circumstances the finding of Anthrocyn powder would not be of much consequence.

9. Looking to the evidence on record it cannot be said that the prosecution has reliably proved that the accused made any demand of bribe from Shri. Katkar to show him any favour.

10. All these aspects have been taken into consideration by the learned Sessions Judge and thereafter he has acquitted the accused. Looking to the evidence on record and view taken by the learned Sessions Judge, I am of the opinion hat the view taken by the learned Sessions Judge is a reasonable and possible view. If the view of acquittal could have been reasonably arrived at then the mere circumstance that the appellate Court could have taken different view would be no ground to interfere. In this connection, there are no dearth of authorities but to eschew prolixity, I am only referring to few of them i.e. **AIR 1971 SC 66 Khedu Mohton and Ors. Vs. State of Bihar, AIR 1987 SC 1083 Totasing Vs. State of Punjab and 1997(1) Mh.L.J. 770 State of Maharashtra Vs. Balram @ Nam Amarsingh Talwar.** It has been observed in para 12 of

the decision in 1997 (1) Mh. L.J. 770 that:-

> 12. At the very outset, we would like to point out that we are seized of the matter in an appeal against acquittal. it is well settled that unless appreciation of evidence is clearly unreasonable or the impugned order of acquittal is vitiated by some illegality, this Court does not interfere in an appeal against acquittal. It is equally well settled that if the view of acquittal is a possible view then this Court does not interfere in spite of the fact that it may feel that had it been the trial Court, it may have taken a different view. We are fortified in our view by the decisions of the Apex Court reported in **AIR 1971 SC 66 Khedu Mohton and Ors. Vs. State of Bihar and AIR 1987 SC 1083 Tota Singh Vs. State of Punjab.** We also feel that in this connection, it would be pertinent to refer to the decision of the Apex Court reported in **1995(2) SCC 486, State of Punjab Vs. Ajiab Singh,** where in para 7, Their Lordships of the Apex Court

observed thus:-

> "We agree that this Court is not precluded or the court hearing the appeal against acquittal is not prevented from examining and reappreciating the evidence on record. But the duty of a court hearing the appeal against acquittal in the first instance is to satisfy itself if the view taken by acquitting court exercising appellate jurisdiction was possible view or not. And if the court comes to conclusion that it was not, it can on reappreciation of evidence reverse the order."

11. Hence, I am not inclined to interfere with the view taken by the learned Sessions Judge. Criminal appeal is dismissed.

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